IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4038 of 1999
and
FIRST APPEAL NO.4039 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TUVAR AKBARKHANJI AMRUTKHANJI

Versus

STATE OF GUJARAT

Appearance:
MR JITENDRA M PATEL for Petitioner
Mr.V.M.Pancholi, AGP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 06/07/2000

COMMON ORAL JUDGEMENT

1. Appellants-original claimants have filed these two appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated October 19, 1998 rendered by the learned Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos.2188 of 1989 and 2189 of 1989. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Agricultural lands of the appellants situated in the sim of village Babsar, Taluka Idar, were placed under acquisition for the public purpose of Dharoi Jalahar Yojna by notification issued under Section 4(1) of the Act, which was published in the official gazette on October 1, 1970. After following the usual procedure under the relevant provisions of the Act, declaration under section 6 of the Act was made, which was published in the government gazette on February 18, 1971. Notices were served to the persons interested and the Land Acquisition Officer, on the basis of materials supplied before him, made his award on December 29, 1971, and offered compensation to the claimants at the rate of Rs.2156/- per Acre for jirayat land and Rs.2848/- per Acre for irrigated land. The Land Acquisition Officer awarded ex-gratia payment at the rate of 25% over the market value offered to the respective claimants for their lands. The Land Acquisition Officer also awarded solatium at the rate of 15% over the market value and ex-gratia payment in view of the compulsory nature of acquisition.

3. The appellants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed applications on January 13, 1972 under Section 18 of the Act, requiring the Land Acquisition Officer to refer their applications to the District Court, Sabarkantha, for determination of market value of acquired lands. In the reference applications, the appellants claimed compensation of irrigated lands at the rate of Rs.14,000/- per Acre and Rs.13,000/- per Acre for non-irrigated lands. The said applications were referred by the Land Acquisition Officer to the District Court, Sabarkantha, where they came to be numbered as Land Acquisition Reference Nos.2188 of 1989 and 2189 of 1989.

4. The said applications were contested by the respondent-State of Gujarat by filing their reply at Exh.8, inter alia, contending that the amount awarded by the Land Acquisition Officer was just and adequate. The

respondent denied that the agricultural lands were having fertility and potentiality of converting them into non-agricultural purpose. It was claimed that the claim applications were barred by period of limitation and the appellants were estopped from filing applications for enhanced compensation and, hence, the applications were liable to be dismissed. On the rival assertions of the pa.R

Exh.9, which are as under:-

1. Whether the claimant proves that compensation awarded by the L.A.O. is inadequate ?

2. Whether the reference application is time barred as alleged?

3. Whether opponents prove that this reference application is not maintainable as principle of estoppel is applicable in this case ?
4. What final order ?

5. The claimants, to substantiate their claim for enhanced compensation, examined Tuvar Akbarkhanji Amrutkhanji, claimant of Land Reference Case No.2188 of 1989, at Exh.17. The witness claimed that in village Babsar, facilities of cooperative society, gram panchayat, State Bank of India, post office, etc. were available and the acquired agricultural lands were having fertility and agriculturists were taking three crops in a year. He further claimed that village Babsar was situated at a distance of 1 km from village Agiya. The claimants examined Joravarsinh Jawansinh at Exh.31, who had purchased lands of Survey No.333 situated in village Agiya admeasuring 24 guntahs from Gopalbhai Mohanbhai by sale deed which was executed on October 25, 1971 for consideration of Rs.10,000/-. Witness Joravarsinh claimed that agricultural lands of village Agiya and present acquired lands were situated adjoining to each other and acquired lands were having more fertility than the lands of sale deed Exh.32. The price of the lands of sale deed Exh.32 comes to Rs.417 per Are. The claimants further examined Amratlal Amichand at Exh.23 who deposed that his father Amichand Joitabhai had purchased agricultural lands situated in village Vadali admeasuring 1 Acre 1 Gunthas from widow of Revabhai Becharbhai by sale deed dated May 22, 1968 for consideration of Rs.12000/-. The witness produced sale deed Exh.29 with respect to agricultural lands of village Vadali bearing Survey No.1604. The witness stated that land of sale deed Exh.29 was situated

at distance of 3 to 4 kms from acquired lands. The price of lands of sale deed Exh.29 comes to Rs.9556 per Acre in the year 1968. The Reference Court rejected sale deed Exh.29 and 32 for determination of market value of present acquired lands on the ground that sale deed Exh.29 was executed in 1968, i.e. prior to two years of the date of notification, whereas sale deed Exh.32 was executed after issuance of notification. However, the Reference Court for the purpose of determination of market value of present acquired lands, placed reliance on previous award rendered in Land Acquisition Cases Nos.1419 of 1979 to 1427/1979 produced at Exh.20. Previous award Exh.20 was in respect of agricultural land of village Bhanpur, Taluka Idar, which came to be placed under acquisition by notification issued under Section 4(1) of the Act on May 10, 1971, wherein, the Reference Court had determined market value of agricultural lands of village Bhanpur at the rate of Rs.220/- per Are for irrigated lands and Rs.200 per Are for non-irrigated lands. The Reference Court also placed reliance on previous award rendered in Land Reference Case Nos. 1160 of 1987 to 1184 of 1987 at Exh.19 in respect of acquired lands of village Ambawada, wherein, the Reference Court had determined market value of acquired lands of the said village at the rate of Rs.200/- per Are for non-irrigated lands and Rs.220/-per Are for irrigated land as on December 23, 1970. The Reference Court deduced that the previous awards Exh.19 and Exh.20 in respect of agricultural lands of villages Ambawada and Bhanpur respectively, were relevant and comparable for determination of market value of present acquired lands of village Babsar, as notifications in both the previous awards were issued in the near proximity of time. The Reference Court, in the ultimate end, determined market value of present acquired lands at the rate of Rs.200 per Are for non-irrigated land and Rs.220 per Are for irrigated lands.

6. However, the Reference Court, relying upon oral evidence of the then Land Acquisition Officer, Virat Vora, Exh.52, deduced that, in response to the notices issued under Section 9 of the Act, the claimants had appeared before the Land Acquisition Officer and had given statements Exh.53 and Exh.54, that they were agreeable for awarding compensation at the rate of Rs.3100/- per Acre for non-irrigated lands and Rs.4100 per Acre for irrigated lands. The Reference Court further deduced that in pursuance of the said statements, agreements Exh.55 and Exh.56 were entered into and, pursuant to that agreement, consent award was made by the Land acquisition officer on December 12, 1971. The Reference Court, therefore, deduced that, in view of statements Exh.53 and Exh.54 and

agreements Exh.55 and Exh.56, the Land acquisition Officer had made award under Section 11(2) of the Act and, as it was a consent award, the claimants were estopped from filing applications under Section 18 of the Act. The said finding of the Reference Court is challenged by the appellants by filing these two appeals.

7. Learned counsel Mr. J.M.Patel for the appellants and learned AGP, Mr. V.M. Pancholi for the State have taken us through the entire record and proceedings produced before the Reference Court.

8. Learned counsel Mr. J.M. Patel for the appellants has vehemently urged that, in absence of specific pleading, the Reference Court was not justified in raising issue about estoppel and, in absence of any pleading, the Reference Court was also not justified in permitting the original opponents to adduce evidence with regard to statements made by the claimants and agreements arrived at between the claimants and the Land Acquisition Officer. Learned counsel, in support of the arguments, placed reliance on the decision of the Supreme Court in the case of T.H. Musthaffa vs. M.P. Varghese and others, reported in (1999) 8 Supreme Court Cases 692. Learned counsel for the appellants further submitted that the alleged agreements produced at Exh.55 and Exh.56 purported to be executed under Section 11(2) of the Act were not signed by Acquiring Body and, therefore, it cannot be said that the said agreements were executed as there was consent between the claimants and the acquiring body with regard to amount of compensation agreed between the parties. Learned counsel for the appellants by inviting our attention to the award Exh.4, submitted that the said award cannot be termed as consent award in absence of any pleading to that effect. Learned counsel for the appellants submitted that there was variance between the amounts agreed upon in the so-called statements Exh.53 and Exh.54 and alleged agreements Exh.55 and Exh.56 as compared to the amount awarded under the award Exh.4 made by the Land Acquisition officer in which the salient features of consent award were lacking and, therefore, the Reference Court has erred in dismissing the reference applications. Learned counsel for the appellants, at the end, submitted that, as there was no consent award, the claimants were entitled to file applications under Section 18 of the Act and, therefore, these appeals be allowed and the amount of compensation determined by the Reference Court be awarded to the claimants.

9. Learned AGP, Mr. V.M. Pancholi, has submitted that the respondents had proved that the claimants before the Special Land Acquisition Officer had made statements that they may be awarded compensation for acquired lands at the rate of Rs.3100 per Acre for non-irrigated land and Rs.4100 per Acre for irrigated land and, consequent upon the said statements, agreements under Section 11(2) of the Act were executed by the respective claimants and, on the strength of those statements and agreements, the Land Acquisition Officer had made award under Section 11(2) of the Act and, therefore, the Reference Court was justified in holding that the reference applications were barred by Section 11(2) of the Act and the claimants were estopped from filing applications under Section 18 of the Act, as there was consent award and, therefore, appeals be dismissed with costs.

10. Submission of learned counsel for the appellants that the Reference Court was not justified in dismissing the applications filed by the appellants on the ground that the appellants were estopped from filing applications as there were agreements executed between the claimants and the acquiring body under Section 11(2) of the Act and pursuant thereto consent award was made by the Land Acquisition Officer, deserves merit. It may be stated that, in the written statement Exh.8, no specific plea was raised that, as there was consent award made by the Land Acquisition Officer, the applications filed by the claimants under Section 18 of the Act were not maintainable. The claimants in their so-called statements Exh.53 and Exh.54 and alleged consent agreements Exh.55 and Exh.56 executed under Section 11(2) of the Act had stated that they may be awarded Rs.3100/- per Acre for non-irrigated lands and Rs.4100/- per Acre for irrigated land. The respondents in their reply had not made a positive averment that in view of the statements and consent agreements the claimants were estopped from filing reference applications under Section 18 of the Act.

11. The Supreme Court, in the case of T.H. Musthaffa (supra), ruled as under:

"Unless the appellant had put forth his case in the pleading and the respondents are put on notice, the respondents cannot make an admission at all and there is no such admission in the course of the pleadings. If the pleadings did not contain the necessary foundation for raising an appropriate issue, the same cannot go to trial. Any amount of evidence in that regard, however, excellent the same may be, will be futile."

In view of the observations of the Supreme Court that in absence of any pleadings and necessary foundation for raising appropriate issues, the Reference Court was not justified in permitting the respondents to lead evidence with regard to so-called statements made by the appellants and the alleged agreements arrived at between the Special Land Acquisition Officer and the appellants. If any evidence was led by the respondents, in absence of specific pleading in the written statement, the Reference Court ought to have ignored such evidence, because, the claimants had no opportunity of meeting with the evidence which was led after the evidence of the claimants was over.

12. During oral examination of Land Acquisition Officer, Mr.Verat Vora, Exh.52, he had produced statements of claimants of Exh.53 and 54, wherein, the claimants had stated that, if they were awarded compensation of their acquired lands they did not want to lead any other evidence and they were not the one claiming solatium. The Land Acquisition Officer also produced agreements Exh.55 and Exh.56 purported to have been made under Section 11(2) of the Act. It is worthwhile to note that said agreements were not signed by the Acquiring Body. With regard to the said agreements no averment was made in written statement Exh.8 and the Reference Court has, therefore, erred in permitting the respondents to lead evidence with regard to alleged agreements Exh.55 and Exh.56. It is also worthnoting that in statements Exh.53 and Exh.54, the claimants had claimed compensation for their acquired lands at the rate of Rs.3100/- per Acre for non-irrigated lands and Rs.4100/- per Acre for irrigated lands, but the Land Acquisition Officer by award Exh.4 had awarded compensation at the rate of Rs.2156/- per Acre for non-irrigated land and Rs.2848/- per Acre for irrigated lands and ex-gratia payment at the rate of 25% on the market value as stated above. Even though under the so-called statements Exh.53 and Exh.54, the claimants had specifically stated that they were not claiming solatium, even then, the Land Acquisition officer had awarded solatium at the rate of 15% on the market value as well as on the amount of ex-gratia payment, which also raises serious doubt in our mind whether award Exh.4 was passed in view of consensus arrived at between the acquiring body and the claimants.

13. In the written statement filed by the State of Gujarat, only contention as regards maintainability of the reference applications was that the said applications were barred by period of limitation. It was stated in the

written statement that the claimants were estopped from filing reference applications. If the award was passed under Section 11(2) of the Act, then the respondent-State of Gujarat ought to have contended that the applications were barred as there was consent award, but, no such contention was raised in the written statement and the Reference Court had also not framed any issue that the applications were barred as there was consent award. In absence of any pleading or any issue, the Reference Court had permitted the Special Land Acquisition Officer to produce the alleged agreements and statements of the claimants on record, when the evidence of the claimants was already over. No suggestion or question was put to the claimants during their cross-examination by learned Government Pleader, who appeared in the Reference Court, that, as there was consent award, they were estopped from filing applications under Section 18 of the Act. Therefore, the Reference Court had committed serious error in permitting the respondents to produce statements of the claimants and the alleged agreements purported to have been executed under Section 11(2) of the Act after the evidence of the claimants was already closed, with the result that no opportunity was given to the claimants to explain that the said statements and agreements were got up and concocted and no such statements or agreements were executed by them. The award, which is produced at Exh.4 on the record of this case, also indicates that the said award was not passed under Section 11(2) of the Act. If the award was made under Section 11(2) of the Act, then the claimants ought to have been awarded compensation at the rate of Rs.3100/- per Acre for non-irrigated land and Rs.4100 per Acre for irrigated land, as stated in their statements produced at Exh.53 and 54. On the contrary, the Land Acquisition Officer had awarded compensation at the rate of Rs.2156 per Acre for jirayat land and Rs.2848/- for the irrigated land and had also awarded ex-gratia payment at the rate of 25% over the market value awarded to the claimants. If it was consent award, then Land Acquisition Officer would not have awarded solatium at the rate of 15% per annum on the market value and the ex-gratia payment. Award Exh.4 cannot be called a consent award made under Section 11(2) of the Act. As there was no consent award, the claimants were entitled in law to file applications under Section 18 of the Act claiming enhanced compensation and requiring Land Acquisition Officer to refer their applications to the District Court, Sabarkantha, for determination of market value of their acquired lands. The fact that the applications filed by the claimants were forwarded to the District Court by the Special Land Acquisition Officer also strengthens the case of the claimants that there was no consent award. If the

award was made with the consent of the claimants, then the Land Acquisition Officer could have rejected applications filed by the claimants and could not have referred the said applications to the District Court for determination of market value of acquired lands. These distinguishing features clearly show that there was no consent award and, therefore, the claimants were entitled to make application for enhanced compensation under Section 18 of the Act. In our view, and the Reference Court had erred in holding that the claimants were estopped from filing applications under Section 18 of the Act in view of there being consent award made under Section 11(2) of the Act. The facts, as narrated above, clearly indicate that the salient features of making consent award were totally lacking. The amount, as agreed between the claimants and the Special Land Acquisition Officer by so-called statements and agreements, was not awarded by the Special Land Acquisition Officer in his award. An award can be called consent award provided it is made by consent or as a result of consensus arrived at by both the parties, i.e. claimants and Acquiring Body. There was great variance between the amount awarded under award Exh.4 and the statements of the claimants at Exh.53 and Exh.54, and therefore also, in our view, the award Exh.4 cannot be called as consent award. The finding of the Reference Court that the applications filed by the claimants under Section 18 of the Act were barred and the claimants were estopped from filing the applications deserves to be quashed and set aside.

14. With regard to quantum of compensation, the Reference Court had determined market value at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands.

15. Before the Reference Court, the claimants had examined Tejabhai Motibhai at Exh.31, who had purchased lands of Survey No.333 situated in village Agiya admeasuring 24 guntahs from Gopalbhai Mohanbhai by sale deed which was executed on October 25, 1971 for consideration of Rs.10,000/-. Witness Joravarsinh claimed that agricultural lands of village Agiya and present acquired lands were situated adjoining to each other and acquired lands were having more fertility than lands of sale deed Exh.32. The price of lands of sale deed Exh.32 comes to Rs.417 per Are. The claimants further examined Amratlal Amichand at Exh.23 who deposed that his father Amichand Joitabhai had purchased agricultural lands situated in village Vadali admeasuring 1 Acre 1 Gunthas from widow of Revabhai Becharbhai by sale deed dated May

22, 1968 for consideration of Rs.12000/-. The witness produced sale deed Exh.29 with respect to agricultural lands of village Vadali bearing Survey No.1604. The witness stated that land of sale deed Exh.29 was situated at distance of 3 to 4 kms from acquired lands. The price of lands of sale deed Exh.29 comes to Rs.9556 per Acre in the year 1968. The Reference Court did not take into consideration sale deed Exh.29 and 32 for determination of market value of present acquired lands on the ground that sale deed Exh.29 was executed in 1968, i.e. prior to two years of the date of notification, whereas sale deed Exh.32 was executed after issuance of notification. However, the Reference Court for the purpose of determination of market value of present acquired lands, placed reliance on previous award rendered in Land Acquisition Cases No.1419 of 1979 to 1427/1979 produced at Exh.20. Previous award Exh.20 was in respect of agricultural land of village Bhanpur, Taluka Idar, which came to be placed under acquisition by notification issued under Section 4(1) of the Act on May 10, 1971, wherein, the Reference Court had determined market value of agricultural lands of village Bhanpur at the rate of Rs.220/- per Are for irrigated lands and Rs.200 per Are for non-irrigated lands. The Reference Court also placed reliance on previous award rendered in Land Reference Case Nos. 1160 of 1987 to 1184 of 1987 at Exh.19 in respect of acquired lands of village Ambawada, wherein, the Reference Court had determined market value of acquired lands of the said village at the rate of Rs.200/- per Are for non-irrigated lands and Rs.220/-per Are for irrigated land as on December 23, 1970. The Reference Court deduced that the previous awards Exh.19 and Exh.20 in respect of agricultural lands of villages Ambawada and Bhanpur respectively, were relevant and comparable for determination of market value of present acquired lands of village Babsar, as notifications in both the previous awards were issued in the near proximity of time. The Reference Court, in ultimate analysis, determined market value of the present acquired lands at the rate of Rs.220/- per Are for irrigated land and Rs.200/- per Are for non-irrigated land. However, the Reference Court, while awarding compensation for acquired lands at the rate of Rs.8800/- per Are for irrigated lands, had erred in deducting Rs.4100/- per Acre awarded by the Special Land Acquisition Officer, and awarded net Rs.4700/- per Acre for irrigated lands. Similarly, the Reference Court, for non-irrigated lands, determined market value at the rate of Rs.8000/per Acre and erred in deducting Rs.3100/- per Acre awarded by the Special Land Acquisition Officer and awarding net amount of Rs.4900/- per Acre for non-irrigated lands. By award Exh.4, the Special Land

Acquisition Officer had not awarded compensation of acquired lands at the rate of Rs.4100/- per Acre for irrigated lands and Rs.3100/- per Acre for non-irrigated lands. In fact, the Special Land Acquisition Officer had awarded compensation at the rate of Rs.2848/- per Acre for irrigated lands and Rs.2156/per Acre for non-irrigated lands. We are of the opinion that the market value determined by the Reference Court at the rate of Rs.8800/per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands deserves to be confirmed. In absence of any appeal by the State of Gujarat with regard to determination of market value of acquired lands by the Reference Court and, as the claimants had not claimed enhanced compensation for acquired lands in these appeals, we confirm determination of market value of the acquired lands of village Babsar as on October 1, 1970 at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/per Acre for non-irrigated lands. Therefore, we do not disturb the finding of the Reference Court with regard to determination of market value of acquired lands situated at village Babsar, as on October 1, 1970. Other statutory benefits extended in favour of the appellants are also hereby confirmed. However, it is made clear that the appellants would not be entitled to interest on the amount of solatium under Section 23(2) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

16. As a result of foregoing reasons, all the appeals filed by the appellants are allowed. The market value of the acquired lands of village Babsar as on October 1, 1970 determined by the Reference Court at the rate of Rs.8800/per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands is hereby confirmed. The finding of the Reference Court that, as there was consent award, the claimants were estopped from filing reference applications, is quashed and set aside. We hold that the reference applications filed by the appellants-claimants are maintainable and the claimants are entitled to compensation of acquired lands of village Babsar as on October 1, 1970 determined by the Reference Court at the rate of Rs.8800/- per Acre for irrigated lands and Rs.8000/- per Acre for non-irrigated lands including the amount of compensation awarded by the Land Acquistion Officer under award Exh.4. The common judgment and award dated August 19, 1998 rendered by the learned Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos.2188 of 1989 and 2189 of 1989, is modified to the aforesaid extent. We direct the respondents to deposit the remaining amount of compensation excluding the amount paid by the Land Acquisition Officer as per Award

Exh.4 in the Reference Court, within four months from today. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(M.H. Kadri, J.) (D.P. Buch, J.)

(s)